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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of)	
)	
PETITION TO AMEND RULES)	
24.3 and 26.12 OF THE ARIZONA)	Supreme Court No. R-18-0026
RULES OF CRIMINAL)	AMENDED PETITION
PROCEDURE; AND RULE 24.1)	
RULES OF COURT PROCEDURE)	
FOR CIVIL TRAFFIC AND CIVIL)	
BOATING VIOLATIONS)	
_____)	

Pursuant to Rule 28 of the Arizona Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, and Chair of the Supreme Court Task Force on Fair Justice for All: Court-Ordered Fines, Penalties, Fees, and Pretrial Release Policies (“the Task Force”) respectfully submits this Amended Petition to amend Rules 24.3 and 26.12 of the Rules of Criminal Procedure and to add a new Rule 24.1 to the Rules of Court Procedure for Civil Traffic and Civil Boating Violations. The amended proposed rule changes are set forth in Appendix A.

This amended petition proposes some modifications to new language in

Criminal Rule 24.3 and Civil Traffic and Civil Boating Rule 24.1 for purposes of clarification.

This amended petition also modifies the proposed new language in Criminal Rule 26.12 to better inform judges that certain types of income are not subject to execution via attachment, garnishment, or other court processes under state and federal law. Under 42 U.S.C. § 407, Social Security income “shall not be transferrable or assignable, at law or in equity,” nor can it be “subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.” Under 38 U.S.C. § 5301, veterans disability benefits may not be subject to “attachment, levy, or seizure by or under any legal or equitable process.” Under A.R.S. § 46-208, any benefits from Temporary Assistance for Needy Families are not “transferable or assignable at law or in equity,” and are not “subject to execution, levy, attachment, garnishment or other legal process, or to the operation of any bankruptcy or insolvency law.” The threat or use of judicial process, including revocation of probation, to collect fines, fees, and even restitution likely falls within the definition of a “legal process” under 42 U.S.C. §407, 38 U.S.C. § 5301, and A.R.S. § 46-208. Congress intended the words “other legal process” to mean any process like execution, attachment, garnishment, or levy. This definition has been expanded to include express or implied threats to collect, as well as use of formal legal machinery, such as civil contempt or the threat of probation revocation

proceedings. *See, e.g., Bennett v. Arkansas*, 108 S.Ct. 1204 (1988)(Social Security and veterans disability benefits exempt from execution to reimburse state for costs of housing recipients in prison); *State v. Catling*, 2 Wash App. 2d 819, 413 P.3d 27 (Wash. Ct. App. 2018)(court cannot compel defendant to pay his fine from SSDI); *In re Lampart*, 306 Mich. App. 226, 856 N.W.2d 1922 (2014)(court cannot compel defendant to pay fine or restitution from either SSI or SSDI). Consequently, judges should be aware of these limitations when considering whether a debtor has willfully failed to pay a court-ordered monetary obligation. The Court may wish to add a Comment to Rule 26.12 that provides citations to the federal and state laws that prohibit the court from compelling payment from income derived solely from these programs.

Wherefore, petitioner respectfully requests that the Court amend the Rules of Criminal Procedure and the Rules of Court Procedure for Civil Traffic and Civil Boating Violations, as proposed in Appendix A.

RESPECTFULLY SUBMITTED this 14th day of August, 2018.

By /S/
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APPENDIX A

(language to be removed is shown in ~~strike through~~, new language is underlined)

Arizona Rules of Criminal Procedure

Rule 24.3. Modification of Sentence

(a) Generally. No later than 60 days of the entry of judgment and sentence or, if a notice of appeal has already been filed under Rule 31, no later than 15 days after the appellate clerk distributes a notice under Rule 31.9(e) that the record on appeal has been filed, the court may correct any unlawful sentence or one imposed in an unlawful manner.

(b) Appeal.

(1) *Noncapital Cases.* In noncapital cases, the party appealing a final decision under Rule 24.3 must file a notice of appeal with the trial court clerk no later than 20 days after entry of the decision in superior court cases, or no later than 14 days after entry of the decision in limited jurisdiction court cases.

(2) *Capital Cases.* In capital cases, after denying modification of a sentence of death, the court must order the clerk to file a notice of appeal from the denial.

(c) Mitigation. On motion of the defendant, or on the court's own motion, the court may mitigate a fine, surcharge under A.R.S. §§12-116.01 and 12-116.02, and an assessment under A.R.S. §12-116.08, contained in the judgment and sentence, other than a mandatory fine, due to defendant's financial circumstances. The court may also mitigate a surcharge if a mandatory fine is imposed. In deciding whether to mitigate a fine, surcharge or assessment, the court may consider any relevant evidence including:

(1) The impact of the fine on the ability of the defendant to pay the restitution.

(2) The extent of the financial hardship on the defendant or on the defendant's immediate family.

(3) The defendant's indigence indicated by qualification for benefits from any of the following:

(A) The Temporary Assistance for Needy Families Program established by § 403 of Title IV of the Social Security Act.

(B) The Supplemental Nutrition Assistance Program (7 U.S. C. §§ 2011 through

2036c).

(C) The Supplemental Security Income Program (42 U.S.C. §§ 1381 through 1383f).

(D) The Medicaid Program (42 U.S.C. §§ 1396 et seq.)

(4) Whether the defendant is seeking, obtaining, or maintaining employment if able and legally permitted to do so, or is attending school.

(5) The defendant's medical and mental condition.

Rule 26.12. Defendant's Compliance with Monetary and Non-Monetary Terms of a Sentence

(a) Method of Payment--Installments. The court may permit the defendant to pay any fine, restitution, or other monetary obligation within a specified period of time or in specified installments. The defendant must pay restitution as promptly as possible, given the defendant's ability to pay.

(b) Method of Payment--to Whom. The defendant must pay a fine, restitution, or other monetary obligations to the court, unless the court orders otherwise. The court must apply the defendant's payments first to satisfy the restitution order and the payment of any restitution in arrears. The court must forward restitution payments to the victim as promptly as practicable.

(c) Failure to Pay a Monetary Obligation or to Comply with Court Orders.

(1) *Defendants Not on Supervised Probation.* If a defendant who is not on supervised probation fails to pay a fine, restitution, or other monetary obligation, or fails to comply with any other term or condition of sentence within the prescribed time, the court must promptly notify the State.

(2) *Defendants on Supervised Probation.* If a defendant who is on supervised probation fails to pay a fine, restitution, or other monetary obligation, or fails to comply with any other term or condition of probation within the prescribed time, the court must promptly notify the defendant's probation officer.

(3) *Court Action upon Failure of a Defendant to Pay a Fine, Restitution, or Other Monetary Obligation or to Comply with Court Orders.* If the defendant fails to timely pay a fine, restitution, or other monetary obligation, or otherwise fails to comply with a court order,

and fails to respond to a court notice informing the defendant of the consequences and resolution options, the court may issue an arrest warrant or a summons and require the defendant to show cause why he or she should not be held in contempt. The court must issue a summons unless there is reason to believe a warrant is required to secure the defendant's appearance. A prosecutor who requests a warrant, or a judge who orders a warrant, must state the reasons for the issuance of a warrant rather than a summons.

(4) *Authority to Modify Monetary Obligation.* If the court finds the defendant's default is not willful and the defendant is unable to pay all or part of the monetary obligation, the court may mitigate the fine, surcharge under A.R.S. §§12-116.01 and 12-116.02, and an assessment under 12-116.08, other than a mandatory fine. The court may also mitigate a surcharge if a mandatory fine is imposed. In determining whether the defendant is unable to pay all or part of a financial sanction, the court may consider any relevant evidence including the factors listed in Rule 24.3(c).

(5) *Exclusion of Certain Income.* Under federal and state law, in determining whether to find the defendant in contempt, the court must exclude income derived from the following sources:

(A) The Temporary Assistance for Needy Families Program established by § 403 of Title IV of the Social Security Act (A.R.S. 46-208);

(B) The Supplemental Security Income Program (42 U.S.C. §§ 1381 through 1383f);

(C) The Social Security Disability Insurance Program (42 U.S.C. §§ 401-433); and

(D) Veterans Disability Compensation.

(4)(6) *Incarceration for Contempt.* If the court finds the defendant in contempt for failure to pay a monetary obligation or failure to comply with a court order, before ordering the defendant incarcerated for contempt, the court must determine that no reasonable measures other than incarceration are adequate to meet the State's interests and permit the defendant a reasonable period of time to pay the obligation in full or make other payment arrangements.

Rules of Court Procedure for Civil Traffic and Civil Boating Violations

Rule 24.1. Mitigation

On motion of the defendant, or on the court's own motion, the court may mitigate a civil penalty imposed pursuant to Title 28, Chapters 3, 5, 7, and 9, a surcharge under A.R.S. §§12-116.01 and 12-116.02, and an assessment under A.R.S. 12-116.08, if the person

demonstrates that the payment would be a hardship on the person or on the person's immediate family. In deciding whether to mitigate a civil penalty, surcharge, or assessment, the court may consider any relevant evidence including:

(a) The extent of the financial hardship on the defendant or on the defendant's immediate family.

(b) The defendant's indigence indicated by qualification for benefits from any of the following:

(1) The Temporary Assistance for Needy Families Program established by § 403 of Title IV of the Social Security Act.

(2) The Supplemental Nutrition Assistance Program (7 U.S. C. §§ 2011 through 2036c).

(3) The Supplemental Security Income Program (42 U.S.C. §§ 1381 through 1383f).

(4) The Medicaid Program (42 U.S.C. §§ 1396 et seq.)

(c) Whether the defendant is seeking, obtaining, or maintaining employment if able and legally permitted to do so, or is attending school.

(d) The defendant's medical and mental condition.